## APPENDIX A

### OPINIONS OF THE SUPREME COURT OF OHIO

#### Opinion Sustaining Motion Treated as Demurrer to Petition

(142 O. S. 439)

*Industrial Commission—Appeal to Supreme Court by employer or other party in interest—Section 871-38, General Code—Inapplicable to award of workmen's compensation—Prohibition—Writ not issued to prevent award of workmen's compensation—Mandamus—Discretion not controlled by writ—But performance of duty compelled, where failure due to abuse of discretion.

1. Section 871-38, General Code, which provides that any employer or other person in interest, being dissatisfied with an order of the Industrial Commission, may commence an action in the Supreme Court against the commission to set aside, vacate or amend any such order on the ground that it is unreasonable or unlawful, does not apply to an order allowing a claim for workmen's compensation under power conferred by Section 1465-90, General Code.

2. Prohibition will not issue to prevent the Industrial Commission from carrying out a lawful award of workmen's compensation made to a claimant pursuant to Section 1465-90, General Code.

3. Mandamus will not lie to control the discretion of the Industrial Commission with respect to an award of compensation; but the writ will lie to compel the performance of a duty specially enjoined by law where failure to perform the duty results from abuse of discretion, violation of law or otherwise.

(No. 29746—Decided January 19, 1944)

Appeal from the Industrial Commission.

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* 439.

A statement of the case appears in the opinion.*

Mr. Robert G. Day and Mr. E. P. McHugh, Jr., for plaintiff.

Mr. Thomas J. Herbert, attorney general, and Mr. Robert E. Hall, for defendant.

Williams, J. This proceeding is brought originally in this court by the Copperweld Steel Company, an employer complying with the workmen's compensation law. The real object sought by plaintiff is to bring about the disallowance of six claims, heretofore allowed by the Industrial Commission, to prevent the awards thereon from being taken into consideration in determining the merit rating to be applied to plaintiff's risk.

The defendant filed a motion to strike out various parts of the petition, but, in view of statements made by counsel in open court on the presentation of the motion, this court now treats the motion as a general demurrer.

It is not necessary to recite the allegations of the petition in full but only those well-pleaded and germane to this inquiry.

On November 13, 1941, six employees of the plaintiff left its industrial plant near the city of Warren, Ohio, after they had finished their work, entered an automobile and proceeded not less than 700 feet along the roadway to a railway grade crossing where the automobile collided with a freight train. In the collision two of the employees were killed and four injured. As a result thereof two claims for death benefits and four for compensation for injuries were filed with and allowed by the Industrial Commission. After the allowances had been made, the employer, plaintiff herein, filed with the commission a petition as to each claim seeking a vacation of the order of allowance and a disallowance of the claim. The petitions were denied and thereupon this suit was instituted.

*It does not affirmatively appear from the petition whether the employees had other means of egress from the grounds surrounding the plant or whether they had

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left the zone of their employment. Allegations of such character would be material on the question of compensability, yet as will be pointed out it is immaterial for the purpose of this case whether those claims are in law compensable or not.

The relief sought by plaintiff is rather sweeping. In the prayer of the petition plaintiff asks: (1) That the "orders of the Industrial Commission be set aside, vacated and reversed; that the * * * claims and each of them be disallowed; (2) that a writ issue prohibiting and enjoining the defendant from continuing such orders or any of them in effect, from making any payments thereunder, from taking into consideration any payments which may have been made thereunder in the merit or individual rating of the plaintiff's workmen's compensation risk, and requiring the defendant to vacate such orders and disallow such claims; and (3) for all such further relief to which the plaintiff may be entitled."

Counsel for plaintiff in their brief and in argument assert that plaintiff is entitled to: (1) a review of the orders of the commission, pursuant to Section 871-38, General Code; or (2) a writ to set aside the orders and compel their disallowance.

The extent to which appeals from orders of the Industrial Commission upon claims for compensation or death benefits may be allowed is provided for in Section 1465-90, General Code. When on rehearing a claim is denied on any ground or grounds specified in that section the claimant is given a right of appeal by filing a petition in the Court of Common Pleas. On the other hand when the claim is allowed the action is final. In that event the complying employer cannot appeal from the order of allowance and the employee * cannot appeal from an order fixing the amount of compensation.

Does plaintiff have a remedy by review under Section 871-38, General Code?

That section insofar as material herein reads thus: "Any employer or other person in interest being dissatis-

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fied with any order of the commission may commence an action in the Supreme Court of Ohio, against the commission as defendant to set aside, vacate or amend any such order on the ground that the order is unreasonable or unlawful and the Supreme Court is hereby authorized and vested with exclusive jurisdiction to hear and determine such action. The commission shall be served with summons as in other civil cases."

Counsel for plaintiff request re-examination of our previous construction of that provision. It was early held that an employee could not bring a proceeding under that section for the allowance of compensation in addition to that which had previously been allowed. Gatton v. Industrial Commission, 93 Ohio St., 203, 112 N. E., 503. Recently it was decided that an employer has no right to have an order, fixing a premium rate, reviewed under this provision. United States Wall Paper Co. v. Industrial Commission, 132 Ohio St., 372, 7 N. E. (2d), 798. Since the decision in the Gatton case there have been many other decisions construing this section. It is now the established rule that its provisions do not confer upon this court power to review orders of the Industrial Commission allowing claims for injury or death arising out of or suffered in the course of employment but apply only to matters pertaining to the safety code. Orders reviewable thereunder are such as "relate to places of employment and to safeguards touching the life, health, and safety of employees." Pittsburg Coal Co. v. Industrial Commission, 108 Ohio St., 185, 188, 140 N. E., 684. United *States Wall Paper Co. v. Industrial Commission, supra. In the two latter reported cases citations to other decisions may be found. Upon re-examination of the question we approve and follow the established rule that orders made by the Industrial Commission under the workmen's compensation law are not reviewable under Section 871-38, General Code.

Is the plaintiff entitled to a writ compelling the setting aside of the awards and disallowance of the claims?

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*443

The plaintiff in its petition has not indicated exactly what kind of a writ is sought. It might be either injjunction, prohibition or mandamus. Plaintiff's counsel do not specifically urge that injunction will lie but do ask ffor a writ "enjoining the defendant." Therefore, we give ppassing consideration to the applicability of the injunctive remedy. This court has power to grant an injunction pendente lite as ancillary to a cause of which it has jjurisdiction, in order to preserve matters in statu quo. HHowever, as to chancery cases in which an injunction is sought as a final remedy, o iginal jurisdiction is vested by statute in the Court of Common Pleas. The Supreme Court has, under the Constitution, no original jurisdiction to affford such relief in chancery.

Counsel for plaintiff do contend that this action iss "in prohibition." Prohibition is a remedy calculated to keep inferior tribunals from usurping power with which they have not been invested. It must be borne in mind that it is not sought herein to prevent a merit rating of a compllying employer as was the case in State, ex rel. Powhatan Miining Co., v. Industrial Commission, 125 Ohio St., 272, 181 NN. E., 99, 82 A. L. R., 938, but to control the action of the Indusstrial Commission with respect to the allowance or disallowvance of certain claims. The power to hear claims and awward death benefits and compensation for injuries has been * expressly conferred upon the commission by Seection 1465-90, General Code, and prohibition will not lie to curb the exercise of that power or to prevent the enforcemernt of a valid award after it has been made upon claims propperly before it, as were the claims in the case at bar.

Do facts pleaded state a cause of action in mandammus? Mandamus is frequently employed to keep the Indusstrial Commission within legal bounds. The writ's use is limited to compelling the performance of a duty specially enjooined by law whether the failure to perform the duty results ffrom an abuse of discretion, a violation of law, or otherwisee.

The complying employer has no direct financial inteerest in the distribution of the state insurance fund. His inteerest

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lies in basic and merit ratings and the amount he is required to pay in premiums. With respect to the subject matter involved in a proceeding upon a claimant's application for compensation under Section 1465-90 General Code, the complying employer's interest is remote. He is neither a necessary nor proper party to such a proceeding; not being a party he has no right to appeal or review. The lack of such right, however, does not deprive him of relief through the extraordinary legal remedy of mandamus, when warranted by the facts.

It has previously been stated that it is inconsequential whether the petition alleges facts to show that the claims were in reality compensable. Upon what theory can every complying employer, upon the allowance of a claim by the Industrial Commission, sue out a writ in this court and try the issue of compensability over again? Were this court to issue a writ compelling the Industrial Commission to set aside orders allowing the claims and to enter orders of disallowance, the claimant's right to a rehearing before the commission would be cut off by a prior adjudication in this court. See * State ex rel. Nicholas v. Gregory et al., Industrial Commission, 130 Ohio St., 165, 169, 198 N. E., 182. Thus the result of allowing the writ would be to deny to claimants, who are not parties here, the right to proceed under the express provision of Section 1465-90, General Code, with respect to the determination of their claims. The power to determine compensability is vested in the commission and cannot be interfered with as long as its discretion is exercised soundly and within legal bounds.

Now, the petition does not set up any abuse of discretion on the part of the commission or aver any facts to show that the orders of the commission were void for fraud or otherwise, or invalid by reason of any statutory provision. No case is made out by the allegations of the petition which would show a right to relief by mandamus.

Since the allegations of the petition do not show a right to a review under Section 871-38, General Code, or a right

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to a writ as prayed for or other relief, the petition is subject to a general demurrer.

Petition held demurrable.

WEYGANDT, C. J., MATTHIAS, HART, ZIMMERMAN, BELL and TURNER, JJ., concur.

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## APPENDIX B

### OPINIONS OF THE SUPREME COURT OF OHIO

On Final Judgment

(143 O. S. 591)

Workmen's compensation—Due process or equal protection not denied employer—No statutory right to review order awarding compensation—Employer contending claims not compensable and merit rating affected—Not entitled to relief by extraordinary legal remedy.

1. An employer is not denied due process of law or equal protection of the law by reason of the fact that he is not given a right by statute to review an order of the Industrial Commission awarding workmen's compensation to his employees or dependents of his deceased employees.

2. When such an order is challenged only on the ground that the claims allowed are not compensable, the employer whose merit rating will be affected thereby is not entitled to relief by way of extraordinary legal remedy.

(No. 29746—Decided July 19, 1944)

Appeal from the Industrial Commission

On Demurrer to Petition and Amendment to Petition

The facts are stated in the opinion.

Mr. Robert G. Day and Mr. E. P. McHugh, Jr., for appellant.

Mr. Thomas J. Herbert, attorney general, and Mr. Robert E. Hall, for appellees.

WILLIAMS, J.:

The petition in this case was held demurrable in Copperweld Steel Co. v. Industrial Commission, 142 Ohio St., 439, 52 N. E. (2d), 735, and the substance of the allegations in that pleading may be found in the opinion. Subsequently the plaintiff filed an amendment to the petition. The controlling question is whether the petition and amendment thereto when considered together are subject to a general de*murrer. The amendment sets out that at the time of the collision out of which the injuries and deaths resulting in the claims herein arose, the employees, injured and killed in such collision, were travelling to their homes by means freely chosen by themselves, and that other means of egress from the plant of the employer were available to them and were customarily used by other employees of the plaintiff; that the collision did not occur during the time or in the place or zone of their employment; and that in any event the employment was not the direct cause of the injuries and deaths. In addition, the amendment sets out many evidential facts and figures tending to show how the merit rating of the plaintiff has been and will be affected by the allowance of the claims arising from the injury and death of the employees in such collision. The amendment then states that "by reason of such claims such merit rating credit was eliminated, the plaintiff was charged and it paid the basic rates for the year 1943, or an aggregate increase in premium of $20,018.62 over what the premium would have been without such claims, and disregarding the effect of such claims in the 25% increase in basic manual rate."

The amendment concludes with these averments: "The plaintiff therefore has a direct financial interest, to the extent of $20,018.62 plus the amount of all additional premiums based on such claims in future years, in the unreasonable and unlawful allowance of the claims involved

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herein and the distribution of the state insurance fund on account thereof.

"Unless this court review and vacate, prohibit or enjoin the orders of the defendant or require the defendant to vacate and set the same aside this plaintiff will be deprived of its property without due process of law and will be denied the equal protection of the laws.

"Wherefore, plaintiff prays judgment as in its petition set forth."

* Counsel for plaintiff in their brief in opposition to the demurrer make this statement:

"It was not sought by the amendment to inject a constitutional question, but to set forth beyond cavil the facts from which it is clear that, unless this court review the decisions below, the plaintiff will have been deprived of its property without due process of law and will have been denied the equal protection of the law. This court has clearly and repeatedly held that the decisions of the Industrial Commission are final only upon questions of fact, and to deny a review of questions of law involved in such decisions would be unconstitutional."

It is plain that the plaintiff challenges only the "decisions" of the commission with respect to the compensability of the claims in question. A full discussion of the problem, however, requires us to consider in a measure the question of merit rating under Section 1465-54, paragraph 3 (formerly paragraph 4) General Code.

In State, ex rel. Williams, v. Industrial Commission, 116 Ohio St., 45, 156 N. E., 101, three members of this court voted to sustain the constitutionality of Section 1465-75, General Code, which as then in force provided inter alia for the payment of compensation out of the surplus fund, and four members dissented on the ground that the statute insofar as that provision was concerned, amounted to a denial of due process. Since the votes of six judges are necessary under the Ohio Constitution to declare a law unconstitutional in a cause originating in this court, the statutory provision under consideration was held valid. Since

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the opinion has no syllabus, Rule VI (see note 94, Ohio St., ix) has no application and the concurring judges are deemed to endorse the pronouncements of law as in a per curiam opinion. With respect to due process, the * language of Judge Jones at page 55, is appropriate here:

"Finally, as a controlling reason why the claim of the employer, that its property is taken without due process, cannot be sustained, is the concession that the state insurance fund does not belong to the employer. Such being the fact, due process is not available to the employer, for his property is not taken. The employer, having paid his premium to the state, has acquired not only insurance, but has also obtained immunity from suit—has obtained his quid pro quo—meanwhile the fund is held in trust by the state solely for the benefit of injured workmen and their dependents."

In State, ex rel. Powhatan Mining Co. v. Industrial Commission, 125 Ohio St., 272, 181 N. E., 99, 82 A. L. R., 938, a writ of prohibition was sought to prohibit imposing upon the relator a premium rate calculated upon merit and predicated on individual experience. Judge Jones in the opinion used this language, making special reference to the equal protection clause:

"Section 1465-54, paragraph 4 (which provided for merit rating), in our opinion, does no violence either to the federal or state Constitutions by authorizing the commission to apply to individual occupations 'that form of rating system which, in its judgment, is best calculated to merit or individually rate the risk most equitably, predicated upon the basis of its individual industrial accident experience, and to encourage and stimulate accident prevention.' Such a classification is neither unreasonable nor arbitrary; and we think its basis is fully sustained by state and federal courts. * * *

" 'A classification having some reasonable basis does not offend against that clause (the equal protection clause)

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merely because it is not made with mathematical nicety, or because in practice it results in some inequality.' "

In considering the question of due process and equal *protection of the laws it is necessary to have in mind that a complying employer is not a necessary or a proper party to the proceeding under Section 1465-90, General Code, for the allowance of compensation. That statute does not provide for his being brought in. His only direct financial interest is, not in the distribution of the fund or in the fund itself, but in the creation of it, that is, in the amount of premiums he pays in the future. Since he has no such interest in the fund or its distribution and is not even a proper party to the proceeding, he is not denied a constitutional right by the allowance of a claim for compensation. He is not aggrieved, if at all, until the commission applies "that form of rating system which, in its judgment, is best calculated to merit or individually rate the risk more equitably, predicated upon the basis of its individual industrial accident experience and to encourage and stimulate accident prevention," pursuant to Section 1465-54, paragraph 3 (formerly paragraph 4), General Code. When action is taken in merit rating, which determines the amount of premium an employer is required to pay, then for the first time his financial interest is affected. True, Section 1465-54, paragraph 3 and kindred sections are silent as to recourse to the courts by an employer in matters relating to merit rating; but since paragraph 3 (formerly 4) has been held constitutional by this court (State, ex rel. Powhatan Mining Co., v. Industrial Commission, supra), and the plaintiff makes no direct attack on its provisions, or on the action of the commission as to merit rating, no further consideration need be given to the question of the constitutionality of such provision.

It is stated in the opinion on the demurrer to the petition (Copperweld Steel Co. v. Industrial Commission, supra) that it is immaterial for the purposes of this case whether the injuries and deaths were compensable or not. It may be remarked in this connection that the facts alleged do not

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show that the orders of the commission in allowing the claims for compensation were absolutely void but could be at the most merely what is denominated erroneous in judicial procedure. As heretofore indicated, such orders cannot be reviewed by this court at the suit of the employer who was not a party to the proceedings brought by the claimants, and the facts pleaded in the petition and amendment thereto do not entitle the plaintiff herein to relief by way of extraordinary legal remedy.

This court has not overlooked Section 1465-75, General Code, which provides inter alia for proceedings against the complying employer who defaults "in any payment required to be made by him or it to the state insurance fund." The plaintiff could refuse to pay a premium assessed against it and upon suit to recover the same, make its defense, if any it has. That section has no application to the present case.

The pertinent questions which the plaintiff makes other than those regarding constitutionality were fully discussed in the previous opinion in this case and what was there said is applicable here.

For the reasons given, the demurrer to the petition and amendment thereto is sustained, and final judgment entered in favor of the defendant.

*Judgment for Defendant.*

WEYGANDT, C. J., MATTHIAS, ZIMMERMAN and TURNER, JJ., Concur. HART and BELL, JJ., Dissent.

BELL, J., dissenting. In stating the reasons for my dissent I shall briefly review this cause from its inception.

The allegations of the original petition call to the attention of the court that the plaintiff, a corporation, * is operating an industrial plant near the city of Warren, Ohio, and is an employer contributing to the State Insurance Fund and otherwise fully complying with the workmen's compensation law of Ohio. On November 12, 1941, among the workmen employed by plaintiff were Isidoros Diamataris, Leonidas Serres, Costas Perris, Markos Mamoujelos, Antionos Spanolios and Tom Russ.

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On the night of that day these six men worked at the plant and on the next morning after they had finished they left the plant and entered an automobile driven by Isidoros Diomataris.

They proceeded some distance over a roadway to a grade crossing on land owned by the Baltimore & Ohio Railroad Company at which time and place the automobile and a freight train proceeding over the crossing came into collision causing the death of the first two named employees and injuring the remaining four.

A claim was filed by or on behalf of each of such employees with the Industrial Commission (hereinafter called the commission) and on June 11, 1943, the commission entered an order in each cause finding that the claimant was entitled to participate in the State Insurance Fund. Plaintiff was notified of the findings and orders and thereafter filed a petition with the commission for rehearing and reconsideration of the claims and orders. Upon rehearing the commission again entered its orders allowing the claims. The plaintiff alleges in detail the facts with reference to the collision between the automobile and the train, and also reasons why the claims should have been rejected.

The prayer, in brief, is that the orders be set aside, vacated and reversed and that the claims be disallowed, that a writ issue prohibiting and enjoining the commission from continuing such orders in effect or making payments thereunder and from taking into consideration any payments made thereunder in the merit * or individual rating of the plaintiff's workmen's compensation risk.

To this petition the commission (defendant) filed a general demurrer.

In *Copperweld Steel Co.* v. *Industrial Commission*, 142 Ohio St., 439, by a unanimous decision, this court held that the petition was demurrable upon the ground that the Workmen's Compensation Act does not grant the employer the right to a review of an order made by the commission awarding compensation to an injured employee.

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Thereafter plaintiff filed an amendment to the petition in which it is alleged that the commission assessed and the plaintiff paid for the year 1943 an aggregate increase in premium of $20,182.62 over the amount the premium would have been without such claims and that plaintiff will be charged with additional amounts by way of increased premiums in future years based upon the allowance of such claims.

The commission again has demurred upon two grounds, (1) that the petition and the amendment thereto do not state facts sufficient to constitute a cause of action, and (2) that several causes of action are improperly joined.

The majority of the court has concluded that the demurrer to the petition and the amendment should be sustained and the petition dismissed.

With that conclusion I am unable to agree.

Under the provisions of the Workmen's Compensation Act every employer who employs three or more persons regularly in the same business is amenable to the act and complying employers are protected against actions at law for damages for death or injury to employees sustained in the course of their employment. The employee is guaranteed compensation for any injury sustained in the course of and arising out of his employment and the dependents of an employee, in * case death ensues, under like circumstances are granted compensation. The act further provides that employers amenable thereto, with the approval of the commission, may become self-insurers. All employers, therefore, who employ three or more persons regularly in the same business, of necessity fall within one of three classifications. (1) Complying employers; (2) noncomplying employers; or (3) self-insurers. The first class pays premiums into the State Insurance Fund, the latter two classes do not.

The commission fixes the amount of the premium that complying employers must pay into the fund based upon the classification of the business and the amount of losses incurred against the fund on account of injuries and death

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of the employees of such employer. It follows that the greater the number of compensable deaths or injuries occurring during any one year the greater the amount of premiums payable by the employer.

In my view of this case two constitutional questions must be considered. (1) Is the complying employer being deprived of his property without due process of law? (2) Is the complying employer being granted the equal protection of the law?

Let us briefly analyze what happens to each class of employers when an employee is killed or injured.

*Class No. 1 Complying Employers*—Where an employee of a complying employer is killed or injured claim is made to the commission and if an award is granted compensation is paid out of the State Insurance Fund. The employer has no voice in the matter. There is no forum wherein such complying employer can set up the defense that the injury or death did not occur in or arise out of the employment even though that be the fact.

By the provisions of the statute every award granted by the commission results in an increase in the * premium which the complying employer must pay for the ensuing years.

The net result is that whether an award is rightfully or wrongfully made the complying employer cannot be heard to complain.

*Class No. 2 Non-complying Employer.*—Where an employee of a non-complying employer is killed or injured the employee or in case of death his dependents have a choice of remedies. A civil action may be maintained for such death or injury against such employer or application may be made to the commission, and it may make an award and certify the same to the Attorney General who shall institute a civil action against such employer to compel payment. However, in either event, the non-complying employer may defend any action brought against him upon the ground that the death or injury did not occur in the course of or arise out of the employment. If such defense

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be established the non-complying employer is not required to pay for the death or injury of such employee.

*Class No. 3 Self-insurers.*—When an employee of such self-insurer is killed or injured, application is filed with the commission by the injured employee or by his dependents in case death ensues and, if an award is granted, the employer, if an action be instituted to compel payment of the award, may defend upon the ground that the death or injury did not occur in or arise out of the employment.

It is self evident that the non-complying and the self-insuring employers before being compelled to pay any award or damages have the legal right to have determined the question as to whether the injury or death occurred in or arose out of the employment. The complying employer has no such right. This court has held frequently that a complying employer has no right to review an order of the commission awarding compensation.

* It is a matter of such common knowledge that judicial notice should be taken of the fact that the commission considers thousands of claims each year and like all human agencies undoubtedly it makes mistakes. In some cases claims are allowed that should be rejected and some persons are compensated who should not receive compensation. In cases where awards are erroneously granted by the commission it is neither just nor equitable that the complying employer be required to pay extra premiums on account thereof. Requiring such payments results in penalizing the complying employer by placing him upon a different basis than the self-insurer or the non-complying employer.

In this case the court goes a step further and decides, in effect, that even though the employer is compelled to pay large sums of money in additional premiums for a period of years by reason of erroneous awards of compensation made by the commission, still the complying employer cannot maintain an action to prohibit the commission from assessing and collecting such additional premiums.

If the complying employer has no remedy the assessment and collection of premiums based upon awards granted by

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the commission to a claimant not entitled thereto amounts to the taking of such employer's property without due process of law.

This court has never squarely decided whether the complying employer has a remedy. It would seem from one statement in the majority opinion that the remedy of the complying employer under such circumstances is to refuse to pay the premium assessed by the commission and when suit is instituted to collect such premium the complying employer may make a defense if he has one.

If that be his exclusive remedy then in my judgment the complying employer is not afforded the equal protection of the law.*

Without quoting in detail all the provisions of the statute, suffice it to say that after the commission has determined the amount owed to the fund and notified the employer thereof such amount so determined shall be paid within ten days and upon failure so to do the commission shall certify the finding to the Attorney General who shall "forthwith institute a civil action against the employer." Such employer is granted ten days to answer and to execute a bond *in double the amount claimed,* with sureties satisfactory to the commission, conditioned that he or it will pay any judgment and costs rendered against him or it for such premiums and upon failure to give such bond it becomes the mandatory duty of the court to appoint a receiver to take charge of the employer's business.

If the employer is relegated to that remedy his cause is lost as soon as suit is instituted for the reason that he could not claim that he did not owe at least a part of the assessed premium.

In the majority opinion it is said that Section 1465-75, General Code, has no application to the present case. If

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* Section 1465-75, General Code, provides in part:

"If any employer who has complied with this act shall default in any payment required to be made by him or it to the state insurance fund for a period of ten days after notice that such payment is due, the same proceedings may be had as in the case of an employer against whom the commission has made a finding as hereinbefore provided."

the complying employer in this case had refused to pay the premium as fixed by the commission and an action had been instituted to require the payment thereof that section by its very language would certainly be applicable.

In addition thereto if the employer had failed to pay the premium the corporation, its president, secretary, general manager or managing agent, each would be personally subject to fine and imprisonment (Section 1465-69a, General Code) and the corporation if sued by some injured employee during the period of non-compliance would be barred of all common-law defenses. To require the complying employer to undergo those hazards in order to review the correctness of an award made by the commission, none of which is required of a self-insurer, does not afford the complying employer equal protection of the law, nor does it afford him a remedy in the ordinary course of the law.

The functions of the commission in granting awards to claimants and in fixing premium ratings are *quasi*-judicial. We have held upon numerous occasions that a writ of prohibition is the appropriate remedy to keep administrative tribunals within the limits of their jurisdiction. See *State, ex rel. Arey, v. Sherrill, City Manager*, 142 Ohio St., 574, 53 N. E. (2d), 501, and cases cited therein.

In the instant case all of the facts being admitted by the demurrer, upon those admitted facts, the commission was without jurisdiction or authority to grant any award of compensation to any of the six claimants and after having done so, it was without jurisdiction or authority to consider such awards in fixing the premium for the ensuing years thereby increasing such premiums.

In my opinion the petition and the amendment thereto state facts sufficient to entitle the plaintiff to relief by this court if the allegations thereof be sustained by proof.

As to the second ground of the demurrer all of the claims grow out of one accident and the allowance of those claims was the basis of the increase in the amount of premiums, and therefore there is no misjoinder of causes of action.

The demurrer therefore should be overruled.

HART, J., concurs in the foregoing dissenting opinion."